

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

CC:PA:7:DL-137593-08

date: September 11, 2008

to: Executive Technical Advisor,  
Office of Governmental Liaison and Disclosure

from: Charles B. Christopher  
Chief, Branch 7  
Procedure & Administration

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subject: Response to Inquiry From Central Collection Authority of Ohio

This memorandum is in response to a letter from the Director of the Central Collection Agency, which was hand-delivered to our office on August 28, 2008, by a Safeguard Review Specialist. The Director of the CCA raised a question as to whether his agency can contract with attorneys to represent the CCA in municipal tax proceedings.

**ISSUES**

1. Whether the Central Collection Agency can hire attorneys as contractors to represent the agency in member municipal tax proceedings.
2. Whether the Central Collection Agency can disclose federal tax information in member municipal tax proceedings.

**CONCLUSION**

1. The CCA can contract with attorneys other than member municipality attorneys to represent the CCA in judicial proceedings.
2. The CCA cannot disclose FTI to member municipalities in municipal court tax proceedings.

**BACKGROUND**

Earlier this year, we advised you that the Central Collection Agency of Cleveland, Ohio (CCA) and the Regional Income Tax Agency of Ohio (RITA) both met the definition of a regional income tax agency in section 6103(b)(5). As such, these agencies are eligible to receive federal return information (FTI) pursuant to section 6103(d)(1).

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These two agencies are now in the process of addressing the Service's safeguard requirements before the receipt and use of FTI. An issue arose in the safeguard review of CCA that may also arise in the review of RITA in mid-September.

The CCA plans to hire attorneys as contractors to represent the CCA in municipal courts where taxpayers challenge tax liability determinations made by CCA on behalf of a member municipality.

#### Disclosures to Contractors

In our January 23, 2008, memorandum, we wrote:

In order to effectuate tax administration, the agencies may enter into contracts pursuant to I.R.C. § 6103(n) and employ a legal representative. The question becomes whether the two general provisions may be used to make disclosures of federal tax information to member municipality employees. We believe that the legislative intent and specificity of subsection 6103(d)(6) takes precedence over the general (n) and legal representation provisions to deny access by and disclosure to local municipalities. Indeed, permitting the agencies to hire municipal attorneys as contractors to litigate cases would render subsection (d)(6) meaningless.

This passage does not prohibit the CCA from hiring attorneys other than municipal attorneys for tax administration and we see no infirmity with following the proposed course of action.

#### Disclosures to Municipal Courts

In our January 23, 2008, memorandum, we wrote:

Inspection by, or disclosure to, a regional income tax agency is only for the purpose of, and to the extent necessary in, the administration of the tax laws of the member municipalities in such entity relating to the imposition of a tax on income or wages. The regional income tax agency may not redisclose tax information to its member municipalities. I.R.C. §6103(d)(6)....

The reason for the prohibition set forth in subsection (d)(6) is two-fold. First, municipalities do not have the means to safeguard federal tax information. Smaller municipalities generally do not have municipal ordinances to create a safeguard system that can be used to secure federal tax information, nor do they have the sophisticated equipment to accept the electronic media by which the IRS usually provides its data. Second, each municipality has a population below the threshold set in section 6103 for those entities authorized to receive federal tax information.

The member municipalities, by themselves, do not meet the population requirements to have access to FTI. In other words, each separate municipality is not a "state" within the definition set forth in section 6103(b)(5). Therefore, federal returns and federal return information cannot be disclosed pursuant to section 6103(d)(1).

Likewise, because each separate municipality does not meet the threshold requirement, federal returns and federal return information cannot be disclosed in municipal tax proceedings under section 6103(h)(4), which permits the disclosure of returns and return information in federal and state administrative and judicial tax administration proceedings.

Nothing in the above prohibits the disclosure of information the CCA developed resulting from the lead provided by FTI. In other words, if the CCA used the FTI as the basis for its own investigation, the information collected by the CCA could be used in the municipal proceeding by CCA attorneys, including non-municipal attorneys hired as contractors. Nothing in section 6103 prohibits state tax agencies from disclosing state tax information to local tax authorities. Our opinion is buttressed by the legislative history of section 6103(d) which provides that

State return information which could be disclosed to local tax authorities would include information resulting from tax audits and investigations conducted by State authorities, even where that information is based on or is substantially similar to Federal return information supplied or made available to State tax authorities. It would not ... be permissible for State tax authorities merely to transcribe Federal return information, designate it as State tax information, and furnish it to local authorities...

See S. Rep. No. 938, 94<sup>th</sup> Cong., 2d Sess. 336, 338 (1976), 1976-3 C.B. (Vol.3) 374, 376.

Based on the amendment to section 6103(b)(5) that includes regional income tax agencies such as the CCA in the definition of "State," we can substitute CCA for "State" and the municipalities for "local authorities" and reach the same result that we have opined.

If you have any questions, feel free to call A M Gulas at 202-622-4570.

cc:  
Sammi Shultz